

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,)	PERB Case No. 06-U-10
)	
Complainant,)	Opinion No. 835
)	
v.)	
)	CORRECTED COPY
District of Columbia Metropolitan Police Department,)	
)	
Respondent.)	
)	

I. Statement of the Case:

On November 28, 2005, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant," "FOP" or "Union"), filed an unfair labor practice complaint and a motion for preliminary relief against the District of Columbia Metropolitan Police Department ("Respondent" or "MPD"). FOP asserts that MPD has violated the Comprehensive Merit Personnel Act ("CMPA") by: (1) refusing to allow officer Wendell Cunningham to bring a union representative with him to a meeting which he believed would result in disciplinary action; (2) retaliating against Officer Cunningham as a result of his union activities; and (3) failing to provide the information relevant and necessary for the Union to properly represent a bargaining unit member (Wendall Cunningham) in the negotiated grievance process challenging MPD's adverse action against that bargaining unit member.

FOP asserts that "there is no dispute that Officer Cunningham was denied representation and Chief Ramsey and [MPD] have refused to provide any of the requested information or documentation." (Compl. at p. 8) Also, FOP claims that these two issues are clear cut. In light of the above, FOP is requesting that preliminary relief should be granted as to the "issues of denial of union representation and the failure to provide relevant and necessary information." Id.

MPD filed a document styled "Agency's Response to Unfair Labor Practice Complaint and Request for Preliminary Relief." In their submission MPD denies that they have violated the CMPA and contends that FOP has failed to satisfy the requirements for preliminary relief. In

addition, MPD asserts that the allegations concerning retaliation and denial of union representation are untimely and should be dismissed.

Also, MPD claims that the allegation regarding failure to provide information "is similarly time barred since the Complaint failed to follow the filing formalities and must therefore be returned to [the] Complainant for these deficiencies to be cured. [Furthermore,] [a]ny attempt at this stage to cure will fall outside of the 120-day window." (Respondent's Answer at p. 2) FOP's motion and MPD's opposition are before the Board for disposition.

II. Discussion

Officer Wendell Cunningham is a police officer employed with the Metropolitan Police Department. FOP indicates that Officer Cunningham has been employed by MPD for 18 years. FOP claims that Officer Cunningham is an active member of the FOP and has held several positions with the FOP, including positions on the Executive Council of the FOP.

FOP asserts that "on April 19, 2005, Officer Cunningham was conducting traffic radar enforcement in the 2400 Block of Branch Avenue, S.E. At approximately 0630 hours Officer Cunningham observed a dark colored Ford Crown Victoria driving at approximately 46 miles per hour. [FOP claims that] Officer Cunningham confirmed the vehicle's speed using his Department-issued radar instrument. Officer Cunningham, in full uniform and wearing a safety vest, motioned for the vehicle to stop. [However, FOP contends that] [t]he vehicle's . . . emergency [lights were activated] and [the vehicle] moved into the oncoming lane of traffic, and drove past Officer Cunningham. [FOP contends that] Officer Cunningham recognized the driver of the vehicle as Assistant Chief of Police Willie Dandridge. Officer Cunningham followed the vehicle to the parking lot of Regional Operation Command-North. [FOP] claims that Assistant Chief Dandridge refused to produce his identification or comply with Officer Cunningham's directions." (Compl. at p. 3).

FOP contends that rather than escalating the incident and arresting Assistant Chief Dandridge at the scene, Officer Cunningham allowed the Chief to leave. FOP claims that "as a result of the Chief's failure to cooperate, Officer Cunningham was unable to serve the Notice of Infraction for traffic offenses. After the incident, and pursuant to General Order PERB-120.23 (serious misconduct), Officer Cunningham contacted. . . [MPD's] Office of Internal Affairs (OIA) regarding the incident."¹ (Compl. at p. 4) FOP asserts that "Officer Cunningham fully complied with any and all requests by the OIA and fully cooperated in the investigation." (Compl. at p. 4).

¹ FOP claims that General Order-PER-120.23, Part III, paragraph 3, defines serious misconduct as any suspected criminal misconduct. In addition, FOP asserts that General Order-PER-120.23, Part V, section B, sub-section (a) requires a member with knowledge of such conduct to make notification. (See Compl. at p. 2.)

FOP asserts that on May 20, 2005 Officer Cunningham was instructed by Acting Executive Assistant Chief of Police Winston Robinson, Jr. to report to the Office of the Executive Assistant Chief of Police. FOP claims that Officer Cunningham was not informed of the parameters of the meeting, but was informed that he would be serving Chief Dandridge with the Notice of Infraction for the violations that occurred on April 19, 2005. FOP contends that "Officer Cunningham believed that he would be asked questions at this meeting; he believed that discipline would result as a result of this meeting; and he was deeply concerned that he would have to face at least two of the most senior members of the command staff by himself. As a result, [FOP claims that] Officer Cunningham brought a union representative with him to the meeting. [However, FOP asserts that] Acting Executive Assistant Chief of Police Robinson refused to allow Officer Cunningham's union representative into the meeting. [In light of the above, FOP argues that] Officer Cunningham was forced to meet with Acting Executive Assistant Chief of Police Robinson and Assistant Chief of Police Dandridge alone and answer questions." (Compl. at pgs. 4-5).

The Complaint notes that on June 20, 2005 Assistant Chief of Police William Ponton of the Office of Responsibility issued a memorandum regarding the April 29, 2005 incident. FOP claims that attached to Assistant Chief Ponton's memorandum was the investigative package memorandum from the OIA regarding the investigation into Assistant Chief Dandridge. FOP asserts that the OIA investigative package was written by Inspector Matthew Klein, Director of the OIA. FOP contends that both of the memoranda recommended that: (1) Assistant Chief Dandridge receive an Adverse Action for his involvement in the incident and (2) the officer who reported Assistant Chief Dandridge's misconduct, Officer Cunningham, receive a Letter of Prejudice for conducting radar speed enforcement without following the applicable MPD guidelines. (See Compl. at p. 5) Also, FOP notes that the OIA memorandum identified Officer Cunningham as a "Shop Steward." (See Compl. at p. 5)

Subsequently, "[o]n July 29, 2005 [MPD's] Disciplinary Review Office (DDRO) imposed discipline on Officer Cunningham by issuing a Letter of Prejudice. [FOP contends that] [t]he Letter of Prejudice was issued to Officer Cunningham for allegedly failing to submit a P.D. 715 pursuant to General Order 303.1 on April 19, 2005." (Compl. at p. 5)

FOP claims that on "August 8, 2005 a timely grievance regarding the Letter of Prejudice was filed on behalf of Officer Cunningham. In addition to appealing the Letter of Prejudice, the grievance requested information regarding the incident and the basis for the Letter of Prejudice. Specifically, the grievance requested [that MPD provide]: (1) the complete investigative file in the matter, for purposes of presenting Officer Cunningham's defense and to question the investigation; (2) copies of each P.D. FL-140 (Monthly Report of Traffic Enforcement Activities) that was submitted at the direction of each district commander for the last twelve months pursuant to the requirements of General Order 303.1; (3) documentation that each district commander has ensured that at least thirty percent of all in-service roll-call training in every district for the last 12 months had, for every month, been comprised of traffic

enforcement-related material as required by General Order 301.1; (4) copies of investigations and the discipline issued to each district commander for each violation of General Order 301.1 over the past year; and (5) the name of any member that had ever been disciplined for failing to fill out a P.D. 715 and the circumstances surrounding the incident. [FOP asserts that the above-noted] . . . information was requested as part of the grievance procedure and for purposes of investigating whether Officer Cunningham's discipline was the result of retaliation." (Compl. at p. 6)

FOP asserts that on August 29, 2005 the Chief of Police, Charles H. Ramsey, issued a response to the grievance. In his response, Chief Ramsey denied the grievance in its entirety and failed to produce any of the requested documents. (See Compl. at p.7.)

FOP claims that MPD's ongoing violations of the CMLA are clear-cut and impact on bargaining unit members. Therefore, FOP asserts that preliminary relief is appropriate in this case.

MPD denies that they have violated the CMLA and contends that FOP has failed to satisfy the requirements for preliminary relief. In addition, MPD asserts that the allegations concerning denial of union representation and retaliation are untimely and should be dismissed. Specifically, MPD notes that the conduct which forms the basis for the unfair labor practice complaint took place on May 20, 2005 and July 29, 2005, respectively. (See Respondent's Answer at p. 2) However, FOP did not file their complaint until November 28, 2005. MPD asserts that FOP's filing occurred more than 120 days after the alleged incidents. Therefore, MPD argues that pursuant to Board Rule 520.4 these allegations are untimely and should be dismissed. Also, MPD claims that the allegation regarding failure to provide information "is similarly time barred since the Complaint failed to follow the filing formalities and must therefore be returned to [the] Complainant for these deficiencies to be cured. [Furthermore, MPD argues that] [a]ny attempt at this stage to cure will fall outside of the 120-day window." (Respondent's Answer at p. 2) FOP's motion and MPD's opposition are before the Board for disposition.

Board Rule 520.4 provides as follows:

Unfair labor practice complaints shall be filed not later than 120 days after the date on which the alleged violations occurred. (Emphasis added.)

The Board has held that "[t]his deadline date is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] Complaint allegations. . . ." Hoggard v. DCPS and AFSCME, Council 20, Local 1959, 43 DCR 1297, Slip Op. No. 352 at p. 3, PERB Case No. 93-U-10 (1993). See also, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, 46 DCR 119, Slip Op. No. 509, PERB Case No. 97-U-07 (1997) and Glendale Hoggard v. District of Columbia Public Employee

Relations Board, 655 A.2d 320, 323 (DC, 1995). “However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiating a cause of action before the Board. The validation, i.e. proof, of the alleged statutory violations is what proceedings before the Board are intended to determine.” Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414 at p.3, PERB Case No. 95-S-01 (1995).

In the present case, FOP asserts that on May 20, 2005 Officer Cunningham was instructed by Acting Executive Assistant Chief of Police Winston Robinson, Jr. to report to the Office of the Executive Assistant Chief of Police. (See Compl. at p. 4) FOP claims that “Officer Cunningham was not informed of the parameters of the meeting, but was informed that he would be serving Chief Dandridge with the Notice of Infraction for the violations that occurred on April 19, 2005.” (Compl. at p. 4) Also, FOP contends that “Officer Cunningham believed that he would be asked questions at this meeting; he believed that discipline would result as a result of this meeting; and he was deeply concerned that he would have to face at least two of the most senior members of the command staff by himself. [Therefore, FOP claims that] Officer Cunningham brought a union representative with him to the meeting. [However, FOP asserts that] Acting Executive Assistant Chief of Police Robinson refused to allow Officer Cunningham’s union representative into the meeting. [As a result, FOP argues that] Officer Cunningham was forced to meet with Acting Executive Assistant Chief of Police Robinson and Assistant Chief of Police Dandridge alone and answer questions.” (Compl at pgs. 4-5). In light of the above, the time for filing a complaint with the Board concerning MPD’s alleged violation commenced when the basis of that violation occurred, namely May 20, 2005. However, FOP did not file their Complaint until November 28, 2005. FOP’s November 28th filing occurred one hundred and ninety two (192) days after Acting Executive Assistant Chief of Police Robinson refused to allow Officer Cunningham’s union representative into the meeting. Therefore, FOP’s allegation concerning MPD’s refusal to allow Officer Cunningham to have a union representative present at the May 20th meeting, clearly exceeds the 120 day requirement in Board Rule 520.4. In light of the above, we find that FOP’s allegation concerning the May 20th incident is not timely.

Also, FOP claims that the disciplinary action taken against Officer Cunningham on July 29, 2005 was in retaliation for his union activities. In support of this claim, FOP notes that the OIA memorandum indicated that Officer Cunningham was a “shop steward”. In addition, FOP argues that Officer Cunningham has been an active union member and has held several positions within FOP, including serving on FOP’s Executive Council.

As previously discussed in this opinion, this Board has held that pursuant to Board Rule 520.4, the deadline date for filing an unfair labor practice complaint “is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] Complaint allegations. . . .” Hoggard v. DCPS and AFSCME, Council 20, Local 1959, supra. See also, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, supra, and Glendale Hoggard v. District of Columbia Public Employee

Relations Board, supra. In light of the above, the time for filing a complaint with the Board concerning MPD's alleged violation commenced when the basis of that violation occurred, namely July 29, 2005.² However, FOP did not file their Complaint until November 28, 2005. FOP's November 28th filing occurred one hundred and twenty two (122) days after the date that MPD issued the "Letter of Prejudice" against Officer Cunningham. Therefore, FOP's allegation that MPD retaliated against Officer Cunningham by issuing a "Letter of Prejudice" on July 29, 2005, clearly exceeds the 120 day requirement in Board Rule 520.4. In view of the above, FOP's allegation concerning the July 29th action taken against Officer Cunningham is not timely.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (D.C. 1991). Moreover, the Board has held that a Complainant's "ignorance of Board Rules governing [the Board's] jurisdiction over [unfair labor practice] complaints provides no exception to [the Board's] jurisdictional time limit for filing a complaint." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995). For the reasons noted above, the Board can not extend the time for filing an unfair labor practice complaint. As a result, FOP's allegations concerning denial of union representation and retaliation, are untimely. Therefore, these two allegations are dismissed.

FOP asserts that pursuant to the parties' collective bargaining agreement ("CBA"), it filed a grievance on behalf of Officer Cunningham on August 8th challenging the "Letter of Prejudice." FOP contends that "[i]n addition to appealing the Letter of Prejudice, the grievance requested information regarding the incident and the basis for the Letter of Prejudice. Specifically, [FOP asserts that] [t]he grievance requested [that MPD provide] the following information: (1) the complete investigative file in the matter, for purposes of presenting Officer Cunningham's defense and to question the investigation; (2) copies of each P.D. FL-140 (Monthly Report of Traffic Enforcement Activities) that was submitted at the direction of each district commander for the last twelve months pursuant to the requirements of General Order 303.1; (3) documentation that each district commander has ensured that at least thirty percent of all in-service roll-call training in every district for the last 12 months had, for every month, been comprised of traffic enforcement-related material as required by General Order 301.1; (4) copies of investigations and the discipline issued to each district commander for each violation of General Order 301.1 over the past year; and (5) the name of any member that had ever been disciplined for failing to fill out a P.D. 715 and the circumstances surrounding the incident." (Compl. at p.6.) "[FOP claims that the above-noted] . . . information was requested as part of the grievance procedure and for purposes of investigating whether Officer Cunningham's discipline

² FOP indicates in the Complaint that on July 29, 2005 MPD's Disciplinary Review Office imposed discipline on Officer Cunningham by issuing a Letter of Prejudice. MPD does not dispute this fact. As a result, there is no dispute concerning the July 29th date.

was the result of retaliation.” (Compl. at p. 6) FOP asserts that on August 29, 2005, Chief Ramsey denied the grievance and failed to produce any of the requested information. (See Compl. at 7)

FOP asserts that their function as exclusive bargaining representative includes representing bargaining unit members in the negotiated grievance process. As a result, FOP contends that the information requested by FOP is necessary and relevant to the Union’s representation of Officer Cunningham in the grievance process challenging the “Letter of Prejudice.” (See Compl. at p. 10)

MPD does not dispute the factual allegations regarding their failure to produce documents which were requested by FOP. Instead, MPD claims that “PERB has improvidently accepted this matter since it fails to meet the PERB Rules that require that [the] filing be in the form of numbered paragraphs - Rule 501.8 - and that the filing be double spaced and not exceed 20 pages - Rule 501.9.” (Respondent’s Answer at p. 1) Specifically, MPD notes that FOP’s initial filing was a 15-page single spaced document. Moreover, MPD contends that “[f]ifteen single-spaced pages, once enlarged to double-spaced, will certainly exceed the 20-page limit.” *Id.* In addition, MPD asserts that the “failure [of FOP] to number the paragraphs creates problems for [MPD] and the PERB in answering and following the issues delineated in the filing.” *Id.* MPD claims that pursuant to Board Rule 501.13 the Executive Director must return the filing for failure to meet the requirements of the Board’s Rules. Furthermore, MPD asserts that since their answer was submitted on December 13, 2005, any attempt to allow FOP to cure the filing deficiencies will fall out of the 120-day window. Therefore, MPD argues that consistent with the Board’s decision in District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, 45 DCR 4590, Slip Op. No. 548, PERB Case No. 98-A-04 (1998), this allegation is also time barred because by the time FOP cures the above-noted filing deficiencies it will be beyond the 120-day time limit contained in Board Rule 520.4. (See Respondent’s Answer at pgs 1-2.)

In addition, MPD claims that “Officer Cunningham admitted that he failed to follow procedures for which he was issued a [L]etter of Prejudice. [MPD asserts that] [a] Letter of Prejudice is the second level of corrective action as provided for in Article 12 of the collective bargaining agreement (CBA). . . . [In addition, MPD argues that] [t]he Letter of Prejudice was based on Officer Cunningham’s admitted failure to complete or submit a P.D. 715 (Radar Enforcement Record) as required by General Order 303.1 (Traffic Enforcement), his failure to notify his superiors and obtain their approval for his off-duty radar enforcement activities, and the resulting Agency concerns for his safety. [MPD contends that the] Agency’s issuance of a Letter of Prejudice based on these infractions cannot be read as a clear-cut violation of any law or rule or retaliation. [In light of the above, MPD concludes that] [t]o rule otherwise would insulate union officials from appropriate discipline. [Furthermore, MPD claims that] [n]o law or regulation provides protection for union officials who are guilty of misconduct or negligence. [MPD asserts that the] Agency’s oversight in responding to the information request does not negate Officer’s Cunningham’s admission of guilt or the other valid bases for the Letter of

Prejudice. [Moreover, MPD claims that] [n]one of the requested information could have resulted in the discipline being rescinded. [Also, MPD argues that] [f]or PERB to consider this oversight as rising to the level of a violation of law would be to improperly elevate form over substance..."(Respondent's Answer at pgs. 5-6)

For the above-noted reasons, MPD requests, among other things, that the Board: (1) find that FOP's claim concerning MPD's failure to provide documents is not timely; (2) find that FOP's claim concerning MPD's failure to provide documents does not constitute an unfair labor practice; and (3) deny the FOP's request for preliminary relief concerning the failure to provide documents. (See Respondent's Answer at p. 6)

In the present case, FOP's November 28th submission did not contain numbered paragraphs and was single spaced. Also, MPD is correct when it points out that Board Rules 501.8 and 501.9, require that a pleading must contain numbered paragraphs and is limited to 20 double-spaced pages. As a result, the Board's Executive Director notified FOP of these filing deficiencies and provided FOP an opportunity to correct these deficiencies. Subsequently, FOP cured the filing deficiencies. However, their corrected Complaint was received after the 120-day period required by the Board's Rules. Therefore, in the present case, the Board must determine whether the corrected Complaint was timely filed. This is the same issue that was considered by the Board in District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, 45 DCR 4590, Slip Op. No. 548, PERB Case No. 98-A-04 (1998).

In District of Columbia Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee, *Id.* MPD filed an Arbitration Review Request on the last day that it could be timely considered under Board Rule 538.1. However, MPD failed to attach a copy of the arbitration award to its request, as required by Board Rule 538.1(c). MPD subsequently cured this filing deficiency by filing a copy of the arbitration award; however, this filing occurred after the mandatory time for filing the Arbitration Review Request. As a result, the Board's Executive Director dismissed MPD's Arbitration Review Request. MPD appealed the dismissal to the Board. In affirming the Executive Director's dismissal of the Request as untimely, the Board held that "the opportunity the Board provides parties under Board Rule 501.13 to cure a deficient pleading when initiating a cause of action, cannot act to extend the mandatory and jurisdictional time period allowed to initiate a cause of action." *Id.* Therefore, the Board found that MPD's Arbitration Review Request was not "officially filed" until after the time provided under Board Rule 538.1. Slip Op. No. 548 at 4. MPD appealed the Board's decision to the Superior Court of the District of Columbia. Judge Dixon of the Superior Court opined that the Board's interpretation would eliminate the benefit of the 10-day period provided under Board Rule 501.13 for curing filing deficiencies. Therefore, Judge Dixon determined that the Board's decision in Slip Op. No. 548, would render Board Rule

501.13³ “virtually meaningless” and reversed the Board’s decision. (See D.C. Metropolitan Police Department v. D.C. Public Employee Relations Board, C.A. No. 98-MPA-16 (order issued April 13, 1999.) In light of Judge Dixon’s decision, MPD’s argument that the allegation regarding failure to produce documents is untimely because the deficiencies were cured after the 120-day period, lacks merit. Therefore, we find that this allegation was timely filed.

After reviewing the parties’ pleadings, it is clear that MPD has not articulated a confidentiality defense or any other viable defense with respect to the information requested by FOP. As a result, we believe that the material issues of fact and supporting documentary evidence concerning FOP’s August 8th request are undisputed by the parties. Thus, the allegation concerning MPD’s failure to produce documents, does not turn on disputed material issues of fact, but rather on a question of law. Therefore, pursuant to Board Rule 520.10, MPD’s failure to produce documents can appropriately be decided on the pleadings.

This Board has previously considered the question of whether an agency has an obligation to provide documents in response to a request made by a union. In University of the District of Columbia v. University of the District of Columbia Faculty Association, 38 DCR 2463, Slip Op. No. 272 at p. 4, PERB Case No. 90-U-10 (1991), we determined that “the employer’s duty under the CMPA includes furnishing information that is ‘both relevant and necessary to the Union’s handling of [a] grievance’ ...” Also, see Teamsters, Locals 639 and 730 v. D.C. Public Schools, 37 DCR 5993, Slip Op. No. 226, PERB Case No. 88-U-10 (1989) and Psychologists Union, Local 3758 of the D.C. Department of Health, 1199 National Union of Hospital and Health Care Employees, American Federation of State County and Municipal Employees, AFL-CIO v. District of Columbia Department of Mental Health, Slip Op. No. 809, PERB Case No. 04-U-41 (2005). Moreover, the Supreme Court of the United States has held that an employer’s duty to disclose “unquestionably extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement.” NLRB v. Acme Industrial Co., 385 U.S. 32, 36 (1967).

³ Board Rule 501.13 provides in pertinent part as follows:

A pleading that is timely filed will be assigned a filing date and case number. The Board or its designated representative shall review the pleading to determine whether it was filed in accordance with the procedural requirements of the CMPA and these rules. **If the review reveals that the pleading was not filed in accordance with the CMPA or these rules, the Executive Director shall notify the party or the party’s representative and allow ten (10) days from the date of notice for the filing deficiencies to be cured. . . Failure to cure deficiencies shall result in dismissal without further notice. (Emphasis added.)**

Furthermore, “[w]e have held that it is not the Board’s role to determine the merits of a grievance as a basis for determining the relevancy or necessity of information requested by a union in the processing of a grievance.” Doctors’ Council of the District of Columbia v. Government of the District of Columbia, et al., 43 DCR 5391, Slip Op. No. 353 at p. 5, PERB Case No. 92-U-27 (1996); University of the District of Columbia v. University of the District of Columbia Faculty Association supra, Slip Op. No. 272 at n. 6. MPD contends that MPD’s “oversight in responding to the information request does not negate Officer Cunningham’s admission of guilt or the other valid bases for the Letter of Prejudice.” (Respondent’s Answer at p. 5) Moreover, MPD claims that none of the requested information could have resulted in the discipline being rescinded. (See Respondent’s Answer at pgs.5-6) However, we believe that MPD’s argument is merely a challenge to the grievability or arbitrability of the subject of the grievance. Moreover, we have stated that these issues present “an initial question for the arbitrator to decide . . .”. American Federation of State County and Municipal Employees, D.C. Council 20, AFL-CIO v. District of Columbia General Hospital, et al., 36 DCR 7101, Slip Op. No. 227 at p. 5, PERB Case No. 88-U-29 (1989). In addition, we find that the requested information is both relevant and necessary to a legitimate collective bargaining function to be performed by the Union, i.e. the investigation, preparation and processing of a grievance under the negotiated grievance procedure. Moreover, MPD has failed to show any substantial countervailing concerns which outweigh its duty to disclose the requested information.

The Board, having reviewed this matter, concludes that by the failing and refusing to produce those documents for which MPD did not raise either a confidentiality defense or any other viable defense, MPD failed to meet their statutory duty of good faith bargaining, thereby violating D.C. Code § 1-617.04(a)(5). In addition, we find that by “these same acts and conduct, [MPD’s] failure to bargain in good faith with [FOP] constitutes derivatively, interference with bargaining unit employees rights in violation of D.C. Code § 1-617.04(a)(1) (2001 ed.)” (Emphasis in original.) American Federation of Government Employees, Local 2725 v. D.C. Housing Authority, 46 DCR 8356, Slip Op. No. 597 at p. 5, PERB Case No. 99-U-33 (1999). Also see, Committee on Interns and Residents v. D.C. General Hospital, 43 DCR 1490, Slip Op. No. 456, PERB Case No. 95-U-01 (1996); American Federation of State, County and Municipal Employees, Local 2776 v. D.C. Department of Finance and Revenue, 37 DCR 5658, Slip Op. No. 245 at p. 2, PERB Case No. 89-U-02 (1990); University of the District of Columbia v. University of the District of Columbia Faculty Association, supra.

In light of our disposition of this case, FOP’s request for preliminary relief is moot.

ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Fraternal Order of Police/Metropolitan Police Department Labor Committee’s (“FOP” or “Union”) allegation that the District of Columbia Metropolitan Police

Department ("MPD") violated the Comprehensive Merit Personnel Act by refusing to allow officer Wendell Cunningham to bring a union representative with him to a meeting which he believed would result in disciplinary action, is untimely. Therefore, this allegation is dismissed.

- (2) FOP's allegation that MPD violated the Comprehensive Merit Personnel Act by retaliating against Officer Cunningham as a result of his union activities, is untimely. Therefore, this allegation is dismissed.
- (3) MPD, its agents and representatives shall cease and desist from refusing to furnish FOP with copies of the documents requested by the Union in its August 8, 2005 grievance. The documents requested by FOP on August 8, 2005, shall be provided to FOP no later than fourteen (14) days from the service of this Decision and Order.
- (4) MPD, its agents and representatives shall cease and desist from interfering, restraining or coercing its employees by engaging in acts and conduct that abrogate employees' rights guaranteed by "Subchapter XVII Labor-Management Relations" of the Comprehensive Merit Personnel Act to bargain collectively through representatives of their own choosing.
- (5) MPD shall post conspicuously, within ten (10) days from the service of this Decision and Order, the attached Notice where notices to bargaining unit employees are customarily posted. The Notice shall remain posted for thirty (30) consecutive days.
- (6) Within fourteen (14) days from the issuance of this Decision and Order, MPD shall notify the Public Employees Relations Board ("Board"), in writing, that the Notice has been posted accordingly. Also, within fourteen (14) days from the issuance of this Decision and Order, MPD shall provide the Board with proof that it has complied with paragraph 3 of this Order.
- (7) 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.

March 28, 2006

CERTIFICATE OF SERVICE

This is to certify that the attached corrected Decision and Order in PERB Case No. 06-U-10 was transmitted via Fax & U.S. Mail to the following parties on this the 7th day of June 2006.

Harold Vaught, Esq.
General Counsel
FOP/MPD Labor Committee
1320 G Street, S.E.
Washington, D.C. 20003

VIA FAX & U.S. MAIL

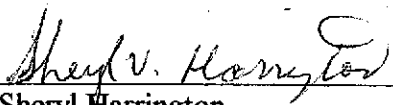
Brenda Wilmore, Director
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VIA FAX & U.S. MAIL

Courtesy Copy:

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VIA FAX & U.S. MAIL



Sheryl Harrington
Secretary

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.

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I. Statement of the Case:

On November 28, 2005, the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant," "FOP" or "Union"), filed an unfair labor practice complaint and a motion for preliminary relief against the District of Columbia Metropolitan Police Department ("Respondent" or "MPD"). FOP asserts that MPD has violated the Comprehensive Merit Personnel Act ("CMPA") by: (1) refusing to allow officer Wendell Cunningham to bring a union representative with him to a meeting which he believed would result in disciplinary action; (2) retaliating against Officer Cunningham as a result of his union activities; and (3) failing to provide the information relevant and necessary for the Union to properly represent a bargaining unit member (Wendall Cunningham) in the negotiated grievance process challenging MPD's adverse action against that bargaining unit member.

FOP asserts that "there is no dispute that Officer Cunningham was denied representation and Chief Ramsey and [MPD] have refused to provide any of the requested information or documentation." (Compl. at p. 8) Also, FOP claims that these two issues are clear cut. In light of the above, FOP is requesting that preliminary relief should be granted as to the "issues of denial of union representation and the failure to provide relevant and necessary information." Id.

MPD filed a document styled "Agency's Response to Unfair Labor Practice Complaint and Request for Preliminary Relief." In their submission MPD denies that they have violated the CMPA and contends that FOP has failed to satisfy the requirements for preliminary relief. In

addition, MPD asserts that the allegations concerning retaliation and denial of union representation are untimely and should be dismissed.

Also, MPD claims that the allegation regarding failure to provide information "is similarly time barred since the Complaint failed to follow the filing formalities and must therefore be returned to [the] Complainant for these deficiencies to be cured. [Furthermore,] [a]ny attempt at this stage to cure will fall outside of the 120-day window." (Respondent's Answer at p. 2) FOP's motion and MPD's opposition are before the Board for disposition.

II. Discussion

Officer Wendell Cunningham is a police officer employed with the Metropolitan Police Department. FOP indicates that Officer Cunningham has been employed by MPD for 18 years. FOP claims that Officer Cunningham is an active member of the FOP and has held several positions with the FOP, including positions on the Executive Council of the FOP.

FOP asserts that "on April 19, 2005, Officer Cunningham was conducting traffic radar enforcement in the 2400 Block of Branch Avenue, S.E. At approximately 0630 hours Officer Cunningham observed a dark colored Ford Crown Victoria driving at approximately 46 miles per hour. [FOP claims that] Officer Cunningham confirmed the vehicle's speed using his Department-issued radar instrument. Officer Cunningham, in full uniform and wearing a safety vest, motioned for the vehicle to stop. [However, FOP contends that] [t]he vehicle's . . . emergency [lights were activated] and [the vehicle] moved into the oncoming lane of traffic, and drove past Officer Cunningham. [FOP contends that] Officer Cunningham recognized the driver of the vehicle as Assistant Chief of Police Willie Dandridge. Officer Cunningham followed the vehicle to the parking lot of Regional Operation Command-North. [FOP] claims that Assistant Chief Dandridge refused to produce his identification or comply with Officer Cunningham's directions." (Compl. at p. 3).

FOP contends that rather than escalating the incident and arresting Assistant Chief Dandridge at the scene, Officer Cunningham allowed the Chief to leave. FOP claims that "as a result of the Chief's failure to cooperate, Officer Cunningham was unable to serve the Notice of Infraction for traffic offenses. After the incident, and pursuant to General Order PERB-120.23 (serious misconduct), Officer Cunningham contacted. . . [MPD's] Office of Internal Affairs (OIA) regarding the incident."¹ (Compl. at p. 4) FOP asserts that "Officer Cunningham fully complied with any and all requests by the OIA and fully cooperated in the investigation." (Compl. at p. 4).

¹ FOP claims that General Order-PER-120.23, Part III, paragraph 3, defines serious misconduct as any suspected criminal misconduct. In addition, FOP asserts that General Order-PER-120.23, Part V, section B, sub-section (a) requires a member with knowledge of such conduct to make notification. (See Compl. at p. 2.)

FOP asserts that on May 20, 2005 Officer Cunningham was instructed by Acting Executive Assistant Chief of Police Winston Robinson, Jr. to report to the Office of the Executive Assistant Chief of Police. FOP claims that Officer Cunningham was not informed of the parameters of the meeting, but was informed that he would be serving Chief Dandridge with the Notice of Infraction for the violations that occurred on April 19, 2005. FOP contends that "Officer Cunningham believed that he would be asked questions at this meeting; he believed that discipline would result as a result of this meeting; and he was deeply concerned that he would have to face at least two of the most senior members of the command staff by himself. As a result, [FOP claims that] Officer Cunningham brought a union representative with him to the meeting. [However, FOP asserts that] Acting Executive Assistant Chief of Police Robinson refused to allow Officer Cunningham's union representative into the meeting. [In light of the above, FOP argues that] Officer Cunningham was forced to meet with Acting Executive Assistant Chief of Police Robinson and Assistant Chief of Police Dandridge alone and answer questions." (Compl. at pgs. 4-5).

The Complaint notes that on June 20, 2005 Assistant Chief of Police William Ponton of the Office of Responsibility issued a memorandum regarding the April 29, 2005 incident. FOP claims that attached to Assistant Chief Ponton's memorandum was the investigative package memorandum from the OIA regarding the investigation into Assistant Chief Dandridge. FOP asserts that the OIA investigative package was written by Inspector Matthew Klein, Director of the OIA. FOP contends that both of the memoranda recommended that: (1) Assistant Chief Dandridge receive an Adverse Action for his involvement in the incident and (2) the officer who reported Assistant Chief Dandridge's misconduct, Officer Cunningham, receive a Letter of Prejudice for conducting radar speed enforcement without following the applicable MPD guidelines. (See Compl. at p. 5) Also, FOP notes that the OIA memorandum identified Officer Cunningham as a "Shop Steward." (See Compl. at p. 5)

Subsequently, "[o]n July 29, 2005 [MPD's] Disciplinary Review Office (DDRO) imposed discipline on Officer Cunningham by issuing a Letter of Prejudice. [FOP contends that] [t]he Letter of Prejudice was issued to Officer Cunningham for allegedly failing to submit a P.D. 715 pursuant to General Order 303.1 on April 19, 2005." (Compl. at p. 5)

FOP claims that on "August 8, 2005 a timely grievance regarding the Letter of Prejudice was filed on behalf of Officer Cunningham. In addition to appealing the Letter of Prejudice, the grievance requested information regarding the incident and the basis for the Letter of Prejudice. Specifically, the grievance requested [that MPD provide]: (1) the complete investigative file in the matter, for purposes of presenting Officer Cunningham's defense and to question the investigation; (2) copies of each P.D. FL-140 (Monthly Report of Traffic Enforcement Activities) that was submitted at the direction of each district commander for the last twelve months pursuant to the requirements of General Order 303.1; (3) documentation that each district commander has ensured that at least thirty percent of all in-service roll-call training in every district for the last 12 months had, for every month, been comprised of traffic

enforcement-related material as required by General Order 301.1; (4) copies of investigations and the discipline issued to each district commander for each violation of General Order 301.1 over the past year; and (5) the name of any member that had ever been disciplined for failing to fill out a P.D. 715 and the circumstances surrounding the incident. [FOP asserts that the above-noted] . . . information was requested as part of the grievance procedure and for purposes of investigating whether Officer Cunningham's discipline was the result of retaliation." (Compl. at p. 6)

FOP asserts that on August 29, 2005 the Chief of Police, Charles H. Ramsey, issued a response to the grievance. In his response, Chief Ramsey denied the grievance in its entirety and failed to produce any of the requested documents. (See Compl. at p.7.)

FOP claims that MPD's ongoing violations of the CMPA are clear-cut and impact on bargaining unit members. Therefore, FOP asserts that preliminary relief is appropriate in this case.

MPD denies that they have violated the CMPA and contends that FOP has failed to satisfy the requirements for preliminary relief. In addition, MPD asserts that the allegations concerning denial of union representation and retaliation are untimely and should be dismissed. Specifically, MPD notes that the conduct which forms the basis for the unfair labor practice complaint took place on May 20, 2005 and July 29, 2005, respectively. (See Respondent's Answer at p. 2) However, FOP did not file their complaint until November 28, 2005. MPD asserts that FOP's filing occurred more than 120 days after the alleged incidents. Therefore, MPD argues that pursuant to Board Rule 520.4 these allegations are untimely and should be dismissed. Also, MPD claims that the allegation regarding failure to provide information "is similarly time barred since the Complaint failed to follow the filing formalities and must therefore be returned to [the] Complainant for these deficiencies to be cured. [Furthermore, MPD argues that] [a]ny attempt at this stage to cure will fall outside of the 120-day window." (Respondent's Answer at p. 2) FOP's motion and MPD's opposition are before the Board for disposition.

Board Rule 520.4 provides as follows:

Unfair labor practice complaints shall be filed not later than 120 days after the date on which on which the alleged violations occurred. (Emphasis added.)

The Board has held that "[t]his deadline date is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] Complaint allegations. . . ." Hoggard v. DCPS and AFSCME, Council 20, Local 1959, 43 DCR 1297, Slip Op. No. 352 at p. 3, PERB Case No. 93-U-10 (1993). See also, American Federation of Government Employees, Local 2725; AFL-CIO v. District of Columbia Housing Authority, 46 DCR 119, Slip Op. No. 509, PERB Case No. 97-U-07 (1997) and Glendale Hoggard v. District of Columbia Public Employee

Relations Board, 655 A.2d 320, 323 (DC. 1995). "However, proof of the occurrence of an alleged statutory violation is not necessary to commence the time limit for initiating a cause of action before the Board. The validation, i.e. proof, of the alleged statutory violations is what proceedings before the Board are intended to determine." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414 at p.3, PERB Case No. 95-S-01 (1995).

In the present case, FOP asserts that on May 20, 2005 Officer Cunningham was instructed by Acting Executive Assistant Chief of Police Winston Robinson, Jr. to report to the Office of the Executive Assistant Chief of Police. (See Compl. at p. 4) FOP claims that "Officer Cunningham was not informed of the parameters of the meeting, but was informed that he would be serving Chief Dandridge with the Notice of Infraction for the violations that occurred on April 19, 2005." (Compl. at p. 4) Also, FOP contends that "Officer Cunningham believed that he would be asked questions at this meeting; he believed that discipline would result as a result of this meeting; and he was deeply concerned that he would have to face at least two of the most senior members of the command staff by himself. [Therefore, FOP claims that] Officer Cunningham brought a union representative with him to the meeting. [However, FOP asserts that] Acting Executive Assistant Chief of Police Robinson refused to allow Officer Cunningham's union representative into the meeting. [As a result, FOP argues that] Officer Cunningham was forced to meet with Acting Executive Assistant Chief of Police Robinson and Assistant Chief of Police Dandridge alone and answer questions." (Compl at pgs. 4-5). In light of the above, the time for filing a complaint with the Board concerning MPD's alleged violation commenced when the basis of that violation occurred, namely May 20, 2005. However, FOP did not file their Complaint until November 28, 2005. FOP's November 28th filing occurred one hundred and ninety two (192) days after Acting Executive Assistant Chief of Police Robinson refused to allow Officer Cunningham's union representative into the meeting. Therefore, FOP's allegation concerning MPD's refusal to allow Officer Cunningham to have a union representative present at the May 20th meeting, clearly exceeds the 120 day requirement in Board Rule 520.4. In light of the above, we find that FOP's allegation concerning the May 20th incident is not timely.

Also, FOP claims that the disciplinary action taken against Officer Cunningham on July 29, 2005 was in retaliation for his union activities. In support of this claim, FOP notes that the OIA memorandum indicated that Officer Cunningham was a "shop steward". In addition, FOP argues that Officer Cunningham has been an active union member and has held several positions within FOP, including serving on FOP's Executive Council.

As previously discussed in this opinion, this Board has held that pursuant to Board Rule 520.4, the deadline date for filing an unfair labor practice complaint "is 120 days after the date Petitioner admits he actually became aware of the event giving rise to [the] Complaint allegations. . . ." Hoggard v. DCPS and AFSCME, Council 20, Local 1959, supra. See also, American Federation of Government Employees, Local 2725, AFL-CIO v. District of Columbia Housing Authority, supra and Glendale Hoggard v. District of Columbia Public Employee

Relations Board, supra. In light of the above, the time for filing a complaint with the Board concerning MPD's alleged violation commenced when the basis of that violation occurred, namely July 29, 2005.² However, FOP did not file their Complaint until November 28, 2005. FOP's November 28th filing occurred one hundred and twenty two (122) days after the date that MPD issued the "Letter of Prejudice" against Officer Cunningham. Therefore, FOP's allegation that MPD retaliated against Officer Cunningham by issuing a "Letter of Prejudice" on July 29, 2005, clearly exceeds the 120 day requirement in Board Rule 520.4. In view of the above, FOP's allegation concerning the July 29th action taken against Officer Cunningham is not timely.

Board Rules governing the initiation of actions before the Board are jurisdictional and mandatory. As such, they provide the Board with no discretion or exception for extending the deadline for initiating an action. Public Employee Relations Board v. D.C. Metropolitan Police Department, 593 A.2d 641 (D.C. 1991). Moreover, the Board has held that a Complainant's "ignorance of Board Rules governing [the Board's] jurisdiction over [unfair labor practice] complaints provides no exception to [the Board's] jurisdictional time limit for filing a complaint." Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995). For the reasons noted above, the Board can not extend the time for filing an unfair labor practice complaint. As a result, FOP's allegations concerning denial of union representation and retaliation, are untimely. Therefore, these two allegations are dismissed.

FOP asserts that pursuant to the parties' collective bargaining agreement ("CBA"), it filed a grievance on behalf of Officer Cunningham on August 8th challenging the "Letter of Prejudice." FOP contends that "[i]n addition to appealing the Letter of Prejudice, the grievance requested information regarding the incident and the basis for the Letter of Prejudice. Specifically, [FOP asserts that] [t]he grievance requested [that MPD provide] the following information: (1) the complete investigative file in the matter, for purposes of presenting Officer Cunningham's defense and to question the investigation; (2) copies of each P.D. FL-140 (Monthly Report of Traffic Enforcement Activities) that was submitted at the direction of each district commander for the last twelve months pursuant to the requirements of General Order 303.1; (3) documentation that each district commander has ensured that at least thirty percent of all in-service roll-call training in every district for the last 12 months had, for every month, been comprised of traffic enforcement-related material as required by General Order 301.1; (4) copies of investigations and the discipline issued to each district commander for each violation of General Order 301.1 over the past year; and (5) the name of any member that had ever been disciplined for failing to fill out a P.D. 715 and the circumstances surrounding the incident." (Compl. at p.6.) "[FOP claims that the above-noted] . . . information was requested as part of the grievance procedure and for purposes of investigating whether Officer Cunningham's discipline

² FOP indicates in the Complaint that on July 29, 2005 MPD's Disciplinary Review Office imposed discipline on Officer Cunningham by issuing a Letter of Prejudice. MPD does not dispute this fact. As a result, there is no dispute concerning the July 29th date.