

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. 11-U-25
Complainant,	)	
	)	Opinion No. 1392
v.	)	
	)	
District of Columbia Metropolitan Police Department <sup>1</sup> ,	)	Decision and Order
	)	
	)	
Respondent.	)	

**DECISION AND ORDER**

**I. Statement of the Case**

Complainant Fraternal Order of Police/Metropolitan Police Department Labor Committee, (“Complainant” or “FOP” or “Union”) filed an Unfair Labor Practice Complaint (“Complaint”) against the District of Columbia Metropolitan Police Department (“Respondent” or “MPD” or “Department”), alleging MPD committed an unfair labor practice when it denied FOP’s attorney’s request to strike certain information from an officer’s Notice of Proposed

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<sup>1</sup> The Executive Director has removed the names of the individual respondents from the caption, consistent with the Board’s precedent requiring individual respondents named in their official capacities be removed from complaints for the reason that suits against District officials in their official capacities should be treated as suits against the District. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011). The D.C. Superior Court upheld the Board’s dismissal of said respondents in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Public Employee Relations Board*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

Adverse Action letter (“Notice letter”) prior to the officer’s hearing before an Adverse Action Panel (“Panel”). (Complaint at 3-4).

Specifically, FOP alleges that MPD’s denial of its attorney’s request constituted interferences with the union member’s right to seek legal assistance through the union, and with the FOP attorney’s representation of the union member, in violation of D.C. Code §§ 1-617.04(a)(1)<sup>2</sup> and 1-617.06(a)(2)<sup>3</sup> of the Comprehensive Merit Personnel Act (“CMPA”). *Id.*

In its Answer, MPD admitted that it denied FOP’s attorney’s request to strike the information from the Notice letter, but denied FOP’s legal conclusion that doing so violated the CMPA. (Answer, at 2-4). In addition, MPD raised the affirmative defense that the Board lacks jurisdiction over this matter because FOP’s allegations are contractual, and should therefore be resolved via the grievance and arbitration procedures established in the parties’ Collective Bargaining Agreement (“CBA”). *Id.*, at 4.

## II. Background

On May 14, 2010, Officer Micheaux Bishop (“Officer Bishop”) was served with a Notice letter stating that the Department intended to terminate her employment based on two (2) allegations of misconduct. (Complaint, at 3; and Attachment 2, at 1 and 5). Specifically, the Department alleged that Officer Bishop violated General Order Series 120.21, Attachment A, Part A-12 (governing conduct unbecoming an officer) by maintaining a close interpersonal relationship with a known drug dealer; and General Order Series 120.21, Attachment A, Part A-25 (governing conduct prejudicial to the reputation and good order of the police force) by disclosing the name of a confidential complainant to the drug dealer and other non-law enforcement persons. *Id.*, Attachment 2, at 1.

In the Notice letter, the Department averred its conclusions were based on the findings of an investigative report (not included in FOP’s Attachments), which stated that Officer Bishop admitted to the alleged misconduct during an Internal Affairs Division (“IAD”) interview, of which she was the subject. *Id.* Furthermore, the Notice letter provided the Department’s analysis of how its proposal to terminate Officer Bishop’s employment met each of the twelve (12) factors articulated in *Curtis Douglas, et al. v Veteran’s Administration, et al.*, 5 M.S.P.R. 280 (1981) (“*Douglas* factors”). *Id.*, at 4; and Attachment 2, at 2-5. Additionally, the Notice letter advised Officer Bishop that she had twenty-one (21) days to submit a written response to

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<sup>2</sup> “The District, its agents, and representatives are prohibited from: (1) Interfering with, restraining, or coercing any employee in the exercise of the rights guaranteed by this subchapter[.]”

<sup>3</sup> “All employees shall have the right: (2) To form, join, or assist any labor organization or to refrain from such activity[.]”

the allegations and, if she so wished, to request a departmental hearing in which her case would be reviewed by a three (3) person Adverse Action Panel. *Id.*, Attachment 2, at 5.

On November 2, 2010, James W. Pressler, Jr., of Pressler & Senftle, P.C. (“Mr. Pressler”), operating as FOP’s General Counsel, sent a written request to MPD asking that “discussion and/or analysis of a recommended penalty under the *Douglas* factors be stricken from the [Notice letter]” prior to Officer Bishop’s November 10 adverse action hearing before the Panel. *Id.*, at 3-4; and Attachment 3. Mr. Pressler asserted that the Department’s inclusion of its *Douglas* factors analysis in the Notice letter was “premature, severely prejudicial, and constitute[d] a violation of [Officer Bishop’s] due process rights.” *Id.*, Attachment 3 (citing *Douglas, supra*, at 302 (holding that the appropriateness of a particular penalty should be determined (among other considerations) once the alleged conduct and requisite general relationship to the efficiency of the service have been established) (internal citations omitted)). Mr. Pressler contended that the Panel was the body that would determine if Officer Bishop’s conduct violated the Orders, and therefore it was inappropriate for the Department to engage in a *Douglas* factors analysis prior to the Panel having made said determination. *Id.* (citing *Parsons v. United States Department of the Air Force*, 707 F.2d 1406, 1409 (U.S. App. D.C. 1983); and *Special Counsel v. Purnell*, 37 M.S.P.R. 184 (1988)). Mr. Pressler further averred that the Department’s inclusion of its *Douglas* factors analysis in the Notice letter would taint the objectivity of the Panel and its ability to “seek the truth” of Officer Bishop’s case. *Id.* (citing *Adverse Action Panels, Professional Development Bureau*, at 6).

On November 4, 2010, MPD denied Mr. Presser’s request, stating: “Panel members should be issued the proposed Notice to ensure they have sufficient information about the hearing.” *Id.*, at 4; and Attachment 4. Further, MPD stated, “[y]ou may file a written response to [the] Notice that will be provided to the Panel.” *Id.*

FOP filed the instant Complaint on March 1, 2011, alleging that MPD’s denial of Mr. Pressler’s request interfered with Officer Bishop’s union rights, “including but not limited to her right to seek legal assistance through the Union[,]” in violation of D.C. Code §§ 1-617.04(a)(1) and 1-617.06(a)(2). *Id.*, at 4. In addition, FOP alleged that denying the request interfered with “Mr. Pressler’s representation of a Union member[,]” also in violation of D.C. Code §§ 1-617.04(a)(1) and 1-617.06(a)(2). *Id.* In its Answer, MPD admitted that it denied Mr. Pressler’s request, but denied that doing so interfered with either Officer Bishop’s right to seek legal assistance through the union or Mr. Pressler’s representation of Officer Bishop. (Answer, at 3-4).

### III. Discussion

Complainants must assert in the pleadings allegations that, if proven, would demonstrate a statutory violation of the CMPA. *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, et al.*, 59 D.C. Reg. 5427, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09 (2009) (citing *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 D.C. Reg. 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and District of Columbia Department of Public Works*, 48 D.C. Reg. 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994)). In accordance with PERB Rule 520.8, the Board investigates the Complaint to determine whether a proper cause of action has been alleged and whether the complainant has requested proper relief. See *Osekre v. American Federation of State, County, and Municipal Employees Council 20, Local 2401*, 47 D.C. Reg. 7191, Slip Op. No. 623, PERB Case Nos. 99-U-15 and 99-S-04 (1998); and *American Federation of Government Employees, Local 2553 v. District of Columbia Water and Sewer Authority*, 59 D.C. Reg. 7300, Slip Op. No. 1252, PERB Case No. 06-U-35 (2012). Additionally, PERB Rule 520.10 states: “[i]f the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral argument.” *American Federation of Government Employees, AFL-CIO, Local 2978 v. District of Columbia Department of Health*, 60 D.C. Reg. 2551, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23 (2013). When considering a dismissal, the Board views the contested facts in the light most favorable to the Complainant. *Osekre, supra* (citing *Doctor's Council of District of Columbia General Hospital v. District of Columbia General Hospital*, 49 D.C. Reg. 1237, Slip Op. No. 437, PERB Case No. 95-U-10 (1995); and *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 24*, 40 D.C. Reg. 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992)).

In the instant matter, FOP alleges that MPD’s denial of Mr. Pressler’s request violated D.C. Code §§ 1-617.04(a)(1) and 1-617.06(a)(2). Further, the pleadings reveal that the underlying alleged facts—that MPD denied FOP’s request to strike its *Douglas* factors analysis from Officer Bishop’s Notice letter prior to the officer’s hearing before the Panel—are undisputed by the parties, leaving only legal questions to be resolved. (Answer, at 2-3). Therefore, in accordance with PERB Rule 520.10, the Board can properly decide this matter based upon the pleadings. *AFGE, AFL-CIO, Local 2978 v. D.C. DOH, supra*, Slip Op. No. 1356 at p. 8, PERB Case No. 09-U-23.

The Board finds that PERB is not the appropriate forum to address the legal questions presented by the parties' pleadings. FOP's allegation that MPD committed an unfair labor practice turns on whether it was legally appropriate for MPD to include its own *Douglas* factors analysis in the officer's Notice letter and to then submit that letter to the Panel as evidence. It would not be prudent for the Board to make a determination as to the appropriateness of evidence before a Panel over which PERB has no operative or directive authority. Such a determination is best left to the Panel itself. *See Fraternal Order of Police/Metropolitan Police Department Labor Committee v. District of Columbia Metropolitan Police Department, et al.*, 59 D.C. Reg. 14896, Slip Op. No. 1332 at p. 3, PERB Case No. 08-U-35 (2012) (holding that while PERB has exclusive jurisdiction to consider appeals from grievance-arbitration awards, it does not have original jurisdiction over such matters) (internal citations omitted). Therefore, in accordance with Rule 520.10, FOP's Complaint is dismissed<sup>4</sup>. *AFGE, Local 2978 v. D.C. DOH, supra*, Slip Op. No. 1356 at p. 7-8, PERB Case No. 09-U-23; *FOP v. MPD, et al., supra*, Slip Op. No. 984 at p. 6, PERB Case No. 08-U-09; *Osekre, supra*; and *AFGE, Local 2553 v. D.C. WASA, supra*, Slip Op. No. 1252, PERB Case No. 06-U-35.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The Fraternal Order of Police / Metropolitan Police Department Labor Committee, D.C. Police Union's Unfair Labor Practice Complaint is dismissed.
2. Pursuant to PERB Rule 559.1, this Decision and Order is final upon issuance.

### BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

May 28, 2013

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<sup>4</sup> As a result of the Board's dismissal of this matter, it is not necessary to address MPD's affirmative defense regarding jurisdiction.

**CERTIFICATE OF SERVICE**

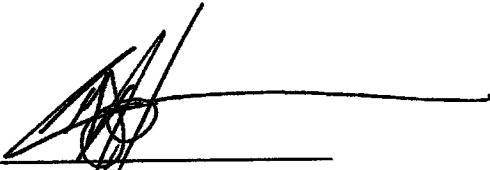
This is to certify that the attached Decision and Order in PERB Case No. 11-U-25, Slip Op. No. 1392, was transmitted via U.S. Mail and e-mail to the following parties on this the 4<sup>th</sup> day of June, 2013.

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