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**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. 07-U-12
	)	
Complainant,	)	Opinion No. 871
	)	
v.	)	Motion for Preliminary Relief
	)	
District of Columbia	)	
Metropolitan Police Department,	)	
	)	
and	)	
	)	
Chief Charles Ramsey,	)	
	)	
Respondents.	)	

**I. Statement of the Case:**

On December 7, 2006, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Complainant” or “FOP”), filed an unfair labor practice complaint and a motion for preliminary relief against the Metropolitan Police Department and Chief Charles Ramsey (“Respondents” or “MPD”). FOP alleges that MPD has violated D.C. Code § 1-617.04 (a) (1) and (5) (2001 ed.) “by failing to provide information requested [by FOP] pursuant to Article 10 of the [parties’] Collective Bargaining Agreement (CBA).” (Motion at p.1)

The Respondents filed an opposition to the motion for preliminary relief (“Opposition”) and an answer to the unfair labor practice complaint denying that they have violated the Comprehensive Merit Personnel Act (“CMPA”). As a result, the Respondents have requested that the Board dismiss the Motion. The Complainant’s Motion and the Respondents’ opposition are before the Board for disposition.

**II. Discussion**

On or about August 3, 2006, MPD served Officer Henderson with a “Notice of Proposed Adverse Action, alleging, among other things, that she failed to obey orders or directions of the

department.” (Compl. at p. 3)

FOP claims that on August 10, 2006, it forwarded a written request for information to MPD pursuant to Article 10 of the parties’ CBA. (See Compl. at p. 3 and Exhibit 2).<sup>1</sup> The reason for the request was to assist FOP in preparing Officer Henderson’s defense against the proposed adverse action.

FOP argues that MPD’s failure to provide the requested information has prevented FOP from adequately preparing a defense for Officer Henderson concerning the proposed adverse action. FOP asserts that MPD’s ongoing violations of the CMPA are clear-cut, flagrant and seriously effect public interest. (See Motion at p. 2) Also, FOP contends that the Board’s ultimate remedy will be inadequate. Therefore, FOP asserts that preliminary relief is appropriate in this case.

The criteria the Board employs for granting preliminary relief in unfair labor practice cases are prescribed under Board Rule 520.15, which provides in pertinent part as follows:

The Board may order preliminary relief ... where the Board finds that the conduct is clear-cut and flagrant; or the effect of the alleged unfair labor practice is widespread; or the public interest is seriously affected; or the Board’s processes are being interfered with, and the Board’s ultimate remedy will be clearly inadequate.

The Board has held that its authority to grant preliminary relief is discretionary. See, AFSCME, D.C. Council 20, et al. v. D.C. Government, et al., 42 DCR 3430, Slip Op. No. 330, PERB Case No. 92-U-24 (1992). In determining whether or not to exercise its discretion under Board Rule 520.15, this Board has adopted the standard stated in Automobile Workers v. NLRB, 449 F.2d 1046 (CA DC 1971). There, the Court of Appeals-addressing the standard for granting

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<sup>1</sup> In the August 10<sup>th</sup> letter FOP requested information regarding: (1) the log books and other accounting methods for keys to the property office Major Narcotics Branch during the 2003 calendar year; (2) the log books or other means of recording the names of the individuals who had been provided keys to the property office during the 2003 calendar year; (3) the log books or other means of recording the names of the individuals who had been provided with the combination to the safe located in the property office during the 2002 and 2003 calendar years; and (4) any documents promulgated by the Major Narcotics Branch describing its policies for obtaining keys and/or access to the property office and property office safe that were in effect during the 2003 calendar year. (See Compl. at pgs. 3-4) FOP claims that the intent of this request was to assist in the defense of Officer Henderson. (See Compl. 4)

relief before judgement under Section 10(j) of the National Labor Relations Act-held that irreparable harm need not be shown. However, the supporting evidence must "establish that there is reasonable cause to believe that the [NLRA] has been violated, and that remedial purposes of the law will be served by pendente lite relief." *Id.* at 1051. "In those instances where [this Board] has determined that the standard for exercising its discretion has been met, the basis for such relief [has been restricted to the existence of the prescribed circumstances in the provisions of Board Rule [520.15] set forth above." Clarence Mack, et al. v. FOP/DOC labor Committee, et al., 45 DCR 4762, Slip Op. No. 516 at p. 3, PERB Case Nos. 97-S-01, 97-S-02 and 95-S-03 (1997).

MPD disputes the material elements of the allegations asserted in the Motion. MPD asserts that the "Respondents have in fact responded to . . . the request for information. [Specifically,] [o]n October 18, 2006, Supervisory Labor Relations Specialist Anna McClanahan transmitted via facsimile and first class mail the response to [the] Complainant's . . . request." (Respondents' Opposition at p. 5) In addition, MPD claims that FOP acknowledged receipt of the requested information. (See Respondents' Opposition at p. 5)

In addition, the Respondents contend that the Motion should be denied because the issue in this case involves an issue of contract interpretation; therefore, the Board lacks jurisdiction. (Respondents' Opposition at pgs. 2-5) Also, MPD asserts that if the Board determines that it has jurisdiction over this matter the Complaint should be dismissed because MPD has complied with FOP's August 10<sup>th</sup> request for information. (See Respondents' Opposition at p. 5) Therefore, MPD suggests that FOP has failed to satisfy the statutory requirements for preliminary relief.

It is clear that the parties disagree on the facts in this case. The Board has found that preliminary relief is not appropriate where material facts are in dispute. See, DCNA v. D.C. Health and Hospitals Public Benefit Corporations, 45 DCR 6067, Slip Op. No. 559, PERB Case Nos. 98-U-06 and 98-U-11 (1998).

In the present case, FOP's claim that the Respondents actions meet the criteria of Board Rule 520.15, are a repetition of the allegations contained in the Complaint. Even if the allegations are ultimately found to be valid, it does not appear that any of the Respondents' actions constitute clear-cut or flagrant violations, or have any of the deleterious effects the power of preliminary relief is intended to counterbalance. The Respondents' actions presumably affect FOP and its members. However, the Respondents' actions stem from a single action (or at least a single series of related actions), and do not appear to be part of a pattern of repeated and potentially illegal acts.

While the CMPA prohibits the District from engaging in unfair labor practices, the alleged violations, even if determined to be valid do not rise to the level of seriousness that would undermine public confidence in the Board's ability to enforce compliance with the CMPA. Finally, while some delay inevitably attends the carrying out of the Board's dispute resolution process, FOP has failed to

present evidence which establishes that these processes would be compromised, or that eventual remedies would be inadequate if preliminary relief is not granted.

In view of the above, we believe that the Respondents' actions are not clear-cut and flagrant as required by Board Rule 520.15. The question of whether the Respondents' actions occurred as FOP claims or whether such actions constitute violations of the CMPA are matters best determined after the establishment of a factual record through an unfair labor practice hearing.

We note that the FOP has also filed another unfair labor practice complaint (PERB Case No. 07-U-16) involving the same issue. Since that case (PERB Case No. 07-U-16) and the present case (PERB Case No. 07-U-16) involve common issues of fact and law, we are consolidating the two cases.

For the reasons discussed above, the Board: (1) denies FOP's request for preliminary relief; (2) directs the development of a factual record through an unfair labor practice hearing; and (3) consolidates PERB Case No. 07-U-12 and PERB Case No. 07-U-16.

### **ORDER**

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

1. The Fraternal Order of Police/Metropolitan Police Labor Committee's (FOP) Motion for Preliminary Relief is denied.
2. PERB Case No. 07-U-12 and PERB Case No. 07-U-16 are consolidated.
3. The Board's Executive Director shall: (a) schedule a hearing, and (b) refer FOP's unfair labor practice complaints (PERB Case Nos. 07-U-12 and 07-U-16) to a Hearing Examiner for disposition.
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.

February 8, 2007

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 07-U-12 was transmitted via Fax and U.S. Mail to the following parties on this the 8<sup>th</sup> day of February 2007.

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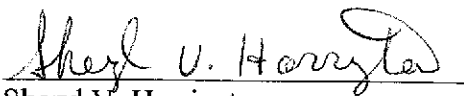
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