



## II. Discussion

On September 1, 2011, the Director of the MPD's Human Resources Management Division informed Michael Patterson, President of NAGE-R3-05, that the Agency intended to request a RIF in the Office of the Chief Information Officer. This RIF would affect several bargaining unit members. See, Complaint at pg. 2. On or about September 6, 2011, Michael Patterson demanded I&E bargaining regarding the RIF. See, Complaint at pg. 2. The Union alleges that the demand for I&E bargaining was pursuant to the parties' CBA and that the request for I&E bargaining was not granted. See, Complaint at pg. 2. MPD alleges that the Union's allegation that the demand for I&E bargaining was pursuant to the CBA is "the legal conclusion of the pleader to which no response is necessary." (Answer at pg. 2). In addition, the Agency denies that the request was not granted. See, Answer at pg. 2.

On September 13, 2011, the Union asked the Agency to hold a briefing before the I&E bargaining session on the RIF and requested the briefing be expedited. See, Complaint at pg. 2. NAGE alleges that the request for the briefing was not granted. See, Complaint at pg. 2. The Respondent denies this allegation. See, Answer at pg. 2.

On September 14, 2011, the Union was notified by Human Resources Director Diane Haines-Walton that the bargaining unit members affected by the RIF would be served with their notification letters that day. The Union then filed an exception with the Chief of Police, demanding that the affected bargaining unit members not be served until the parties engaged in I&E bargaining. The bargaining unit members were served on September 14, 2011. See, Complaint at pg. 2. NAGE alleges that it received a response from the Chief of Police on September 16, 2011 and that the Union's request was denied. See, Complaint at pg. 2. MPD alleges "the Chief of Police reaffirmed her commitment to engage in impact and effects bargaining regarding the RIF and promised to incorporate the results of such bargaining into the action." (Answer at pg. 2).

The Union alleges that two of the employees subject to the RIF were Union officials and that other employees subject to the RIF participated in Union grievances and other activities. See, Complaint at pg. 3. The Agency admits that two Union officials were subject to the RIF but claims it is without sufficient knowledge to admit or deny whether other employees affected by the RIF participated in Union activities. See, Answer at pg. 2.

NAGE further alleges that the Agency's conduct constitutes an unfair labor practice and violates D.C. Code § 1-617.04(a)(1), (2), (3), (4), and (5). See, Complaint at pg. 3. MPD denies the Union's allegation and asserts the affirmative defense that matter is outside of the Board's jurisdiction. See, Answer at pgs. 2-3.

In the present case, the Union and Agency are in dispute as to whether: (1) MPD refused NAGE's requests to engage in I&E bargaining; (2) MPD refused to hold a briefing prior to engaging in I&E bargaining, and (3) the Chief of Police agreed to incorporate the results of any I&E bargaining into the RIF. On the record before the Board, establishing the existence of the alleged unfair labor practice violations requires the evaluation and the resolution of conflicting allegations. Therefore, the Board declines to dismiss the allegation based on the pleadings.

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 the Complaint be denied.
2. The Board's Executive Director shall refer the National Association of Government Employees Local R3-05'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.
3. The Notice of Hearing shall be issued seven (7) days prior the date of the hearing.
4. 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.

November 18, 2011

**CERTIFICATE OF SERVICE**

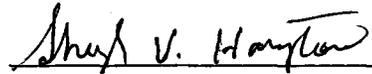
This is to certify that the attached Decision and Order in PERB Case No. 11-U-54 was transmitted via Fax and U.S. Mail to the following parties on this the 18<sup>th</sup> day of November 2011.

Edward Elder, Esq.  
601 North Fairfax Street  
Suite 125  
Alexandria, VA 22314

**FAX & U.S. MAIL**

Mark Viehmeyer, Esq.  
Metropolitan Police Department  
300 Indiana Avenue, N.W.  
Room 4126  
Washington, D.C. 20001

**FAX & U.S. MAIL**



Sheryl V. Harrington