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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,)	
)	
Complainant,)	PERB Case No. 99-U-27
)	
)	Opinion No. 664
)	
v.)	Motion to Stay Enforcement
)	
District of Columbia Metropolitan Police)	
Department,)	
)	
Respondent.)	

DECISION AND ORDER

This matter involves a Motion to Stay Enforcement filed by the District of Columbia Metropolitan Police Department (MPD). MPD is requesting that the Board stay enforcement of its Decision and Order issued in the above referenced proceeding.

On June 1, 2001, the Board issued a Decision and Order (Slip Op. No.649) in this matter. In the June 1st Decision, the Board concluded that MPD violated the Comprehensive Merit Personnel Act (CMPA) by dealing directly with bargaining unit members concerning a proposed change in the tour of duty and days off schedule. As a result, MPD was directed to: (1) rescind its questionnaire; (2) refrain from using the results of the ballots that were mailed in May 1999; and (3) post a Notice indicating that it had committed an unfair labor practice.

MPD has appealed the Board's decision in the District of Columbia Superior Court (Superior Court). In addition, MPD filed a "Motion to Stay Enforcement" with the Board. MPD is requesting that the Board stay enforcement of its Decision and Order pending the disposition of MPD's appeal in the Superior Court. MPD's Motion is now before the Board for disposition.

The Board's Rules and the CMPA do not provide for an automatic stay when a party files an appeal with the Superior Court. As a result, the Board must look at the facts in this case in order to determine whether to grant MPD's motion to stay enforcement pending the outcome of the agency's appeal to the Superior Court.

In the present case, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP) filed a complaint alleging that MPD violated D.C. Code §1-618.4(a)(1) and (5). Specifically, FOP alleged that MPD committed an unfair labor practice by: (1) dealing directly with bargaining unit members¹ and (2) refusing to bargain with FOP concerning proposed changes to the terms and conditions of employment. In its Decision and Order, the Board did not adopt the Hearing Examiner's findings that MPD did not commit an unfair labor practice. Instead, the Board concluded that MPD violated the CMPA by "contacting FOP's membership directly to get their opinions on proposed changes to their tour of duty and days off schedule." (Slip Op. No. 649 at p. 6). As a result, the Board in its Decision and Order directed MPD to: (1) rescind its questionnaire; (2) refrain from using the results of the ballots that were mailed in May 1999; and (3) post a Notice indicating that it had committed an unfair labor practice. Thereafter, MPD filed their "Motion to Stay Enforcement".

The Board has noted that, "the overriding purpose and policy of relief afforded under the CMPA, for unfair labor practices which violate employee rights, is the protection of rights that inure to all employees." Charles Bagentose v. D.C. Public Schools, 41 DCR 1493, Slip Op. No. 282 at p.3, PERB Case No. 88-U-33 (1991). Therefore, if MPD is not required to comply with the Board's Order in this case, "the CMPA's policy and purpose of guaranteeing the rights of all employees is undermined." See, Barbara Milton v. District of Columbia Water and Sewer Authority, Slip Op. No. 639, PERB Case Nos. 98-U-24 and 98-U-28 (2000). Specifically, those "employees who are most aware of [MPD's] illegal conduct and thereby affected by it, would not know that exercising their rights under the CMPA is indeed fully protected." Id. Also, if the Board grants MPD's request, MPD could use the information it obtained from bargaining unit members (concerning the proposed changes to the tour of duty and days off schedule) until the Superior Court rules on their appeal.

In their motion, the petitioner (MPD) has failed to cite any Board precedent to support its request. Second, MPD has failed to provide a basis for granting the requested relief under the facts of this case. Instead, MPD has requested that the Board stay enforcement of its Decision and Order merely because the Office of the Corporation Counsel has filed an appeal in the Superior Court.²

¹FOP claims that MPD circumvented the union by asking bargaining unit members to vote concerning changes in the tour of duty and days off schedule.

²MPD's appeal was filed with the Superior Court on July 3, 2001.

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In view of the above, we believe that MPD has failed to assert a compelling reason for their request. Therefore, MPD's "Motion to Stay Enforcement is denied.

ORDER

IT IS HEREBY ORDERED THAT:

The Metropolitan Police Department's Motion to Stay Enforcement is denied.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

September 25, 2001

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 99-U-27 was transmitted via Fax and/or U.S. Mail to the following parties on this 25th day of September 2001.

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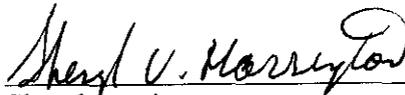
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