

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**

_____)	
Fraternal Order Of Police/)	
Metropolitan Police)	
Department Of Labor Committee,)	
)	
Complainant,)	
)	
and,)	
)	
District Of Columbia)	PERB Case No. 10-U-52
Metropolitan Police)	
Department,)	
)	Slip Opinion No. 1241
Respondent.)	
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_____)	

DECISION AND ORDER

I. Statement of the Case

This matter concerns an Unfair Labor Practice Complaint ("Complaint") filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Union" or "FOP") against the District of Columbia Metropolitan Police Department ("Respondent" or "MPD") on September 10, 2010. The Union alleges that the MPD violated the Comprehensive Merit Personnel Act ("CMPA"). Specifically, the FOP alleges that the MPD violated D.C. Code §1-617.04(a) (1) and (5) by refusing to provide information requested by James W. Pressler, Jr. the attorney representing Officer John Young before a D.C. Metropolitan Police Department Adverse Action Hearing.

MPD filed an Answer to the Complaint requesting that the Complaint be dismissed. (See Answer pgs. 2-5).

II. Discussion

In the Complaint, the FOP makes the following factual allegations:

8. On April 2, 2010, Mr. Pressler sent a letter to Inspector Eldridge, *via* facsimile, requesting that certain documents be produced in connection with his representation of Officer Young at the upcoming adverse action hearing. Specifically, Mr. Pressler requested the following:

All DRD disciplinary cases from January 1, 2000, to the present in which disciplinary action has been proposed against a sworn member of the Metropolitan Police Department for failing to report to the Police and Fire Clinic (PFC) for a random drug screening after being notified by the Department to report for such random drug screening. For each such case please provide the following documents:

- a) written Notice of Proposed Adverse Action;
- b) written Final Notice of Adverse Action;
- c) final written disposition of the case.

9. In response, on April 6, 2010, Inspector Eldridge indicated that he received the information request only two (2) business days before the scheduled hearing and that he would need more time to respond to the request.

10. On April 20, 2010, Mr. Pressler wrote to Inspector Eldridge and reiterated his desire to receive the previously requested documents in order for the Adverse Action Panel (Panel) to have the information needed to make a proper determination of the penalty to be issued against Officer Young. Mr. Pressler also informed Inspector Eldridge that in his closing remarks at the hearing, he told the Panel that he expected to be able to supplement his argument after he received the requested documents. Further, Mr. Pressler cited two prior cases by name, Officer Ruth Fullard and Lieutenant Brian McAllister, and specifically asked Inspector Eldridge to provide him with a copy of the records associated with these two cases.

11. Not receiving a response, on April 28, 2010, Mr. Pressler again requested that he receive the disciplinary packages for Officer Fullard and Lt. McAllister and further noted that under circumstances that were very similar to Officer Young's case, both Fullard and McAllister believed that they had only received an Official Reprimand for their conduct. Mr. Pressler also reiterated his demand for all disciplinary cases addressing a member's failure to report to the clinic for random drug testing.

12. On April 29, 2010, Mr. Pressler received some of the disciplinary paperwork directly from Officer Fullard. The paperwork indicated that Officer Fullard received a five (5) day suspension, with all five days held in abeyance. As a result, Mr. Pressler submitted copies of this documentation to the Panel as well as Inspector Eldridge in order to supplement his closing remarks. Mr. Pressler also refreshed his request for Lt. McAllister's related disciplinary action and the previously requested information concerning other sworn members of the MPD who failed to report to the PFC for drug screenings.

13. On April 30, 2010, Inspector Eldridge denied the request for information.

14. On May 13, 2010, Mr. Pressler reiterated his desire for the previously requested documents citing the D.C. Code and the CBA. Citing D.C. Code 1-617.04(a)(5) and Article 10 of the CBA, Mr. Pressler sent a formal information request to Inspector Eldridge for each of the documents set forth above in Paragraph 8.

15. On May 26, 2010, Inspector Eldridge issued a response to Mr. Pressler's information request for Officer Young. Inspector Eldridge denied the request for information and cited the posture of the adverse action proceeding and the disclosure limitations in the District Personnel Manual as his reasons for doing so.

(Complaint at pgs. 4-5).

The Union bases its Unfair Labor Practice Complaint on the above factual allegations and contends that the MPD violated the GMPA, specifically §1-617.04(a) (1) and (5) by refusing to provide the requested information: "The MPD, therefore, committed an Unfair Labor Practice by failing to timely produce the relevant and necessary information requested by James W. Pressler, Jr. In view of the MPD's illegal action, Officer Young, the Union and its membership are entitled to relief." (See Complaint p. 7)

The Respondents do not deny the allegations in the Complaint but they do deny that their refusal to provide the requested information is an unfair labor practice: "The Board should dismiss the Complaint on the basis that there is no evidence of the commission of an unfair labor practice as stated in the foregoing paragraphs and, accordingly, deny Complainant's request to find that the Respondents have engaged in an unfair labor practice..." (See Answer at p.6)

Unfair Labor Practice

The Board has held while a Complainant need not prove their case on the pleadings, they must plead or assert allegations that, if proven, would establish the alleged statutory violations.

See *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 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 D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994). Furthermore, the Board views contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. See *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 DCR 1751, Slip Op. No. 303, PERB Case No. 91-U-17 (1992). Without the existence of such evidence, Respondent's actions cannot be found to constitute the asserted unfair labor practice. Therefore, a Complaint that fails to allege the existence of such evidence, does not present allegations sufficient to support the cause of action." *Goodine v. FOP/DOC Labor Committee*, 43 DCR 5163, Slip Op. No. 476 at p. 3, PERB Case No. 96-U-16 (1996).

In the present case, Complainant alleges that "The MPD, therefore, committed an Unfair Labor Practice by failing to timely produce the relevant and necessary information requested by James W. Pressler, Jr." (See Complaint at p.7). Specifically, Complainant alleges that MPD violated D.C. Code § 1-617.04(a)(1) and (5) by refusing to provide relevant and necessary information to the Union. (See Complaint at p.6).

The Board has previously held that materials and information relevant and necessary to its duty as a bargaining unit representative must be provided upon request. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department*, ___ DCR ___, Slip Op. No. 835, PERB Case No. 06-U-10 (2006). The Board's precedent is that an agency is obligated to furnish requested information that is both relevant and necessary to a union's role in: (1) processing of a grievance; (2) an arbitration proceeding; or (3) collective bargaining. See *Id.*; See also *American Federation of Government Employees, Local 2741 v. District of Columbia Department of Parks and Recreation*, 50 D.C.R. 5049, Slip Op. No. 697, PERB Case No. 00-U-22 (2002); and see *Teamsters Local Unions 639 and 670, International Brotherhood of Teamsters, AFL-CIO v. District of Columbia Public Schools*, 54 D.C.R. 2609, Slip Op. No. 804, PERB Case No. 02-U-26 (2002).

Pursuant to Board Rule 520.10 - Board Decision on the Pleadings, provides that: "[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." Consistent with that rule, the Board finds that the circumstances presented warrant a decision on the pleadings.

The Board has no intention of deviating from the longstanding precedent of viewing contested facts in the light most favorable to the Complainant in determining whether the Complaint gives rise to an unfair labor practice. The Board finds that the Union's Complaint offers sufficient evidence that it sought information relevant and necessary to the Union's collective bargaining duties.

In light of the above, the Board finds that the MPD violated the CMPA and committed an unfair labor practice when it refused to provide the requested information.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complaint filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complaint," "Union," or "FOP") is granted.
2. 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 4, 2012

CERTIFICATE OF SERVICE

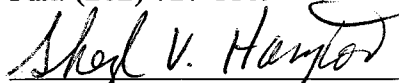
This is to certify that the attached Decision and the Board's Decision and Order in PERB Case No. 10-U-52 are being transmitted via Fax and U.S. Mail to the following parties on this the 4th day of February, 2012.

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