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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. 11-U-15
Complainant)	
)	Opinion Op. No. 1214
v.)	
)	
District of Columbia Metropolitan Police Department)	Motion to Dismiss
)	
Respondent)	
)	

DECISION AND ORDER

I. Statement of the Case

On December 20, 2010, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Complainant” or “FOP”) filed an unfair labor practice complaint (“Complaint” or “Union”) against the Metropolitan Police Department (“Respondent” or “MPD”),¹ alleging that the Respondent failed to bargain in good faith following a demand for bargaining with regard to Internal Affairs Bureau Memorandum No. 2010/05, and thereafter implemented a new policy. The Complainant further alleges that the Respondent failed to provide information requested by Steward Delroy Burton regarding the implementation of a new policy concerning alcohol related incidents. (See Complaint at p.1).

On January 10, 2010, the Respondent filed an “Answer to Unfair Labor Practice Complaint” (“Answer”) denying that its actions violate the CMPA. First, the Respondent asserts that the Complaint concerns a request made on July 7, 2010, and is untimely filed. Furthermore, the Respondent asserts that the matter at issue is a contractual matter, not within the jurisdiction

¹ The Complainant named the Police Chief and other management personnel in the caption of the Complaint. The Respondents requested that these names be removed from the caption, claiming that the named-persons are acting as agents of the District, and not their individual capacity. The Executive Director has removed the names from the caption consistent with the Board’s case precedent. See *Fraternal Order of Police/Metropolitan Police Department Labor Committee and Metropolitan Police Department, _DCR_, Slip Op. No. 1118 at p. 5, PERB Case No. 08-U-19 (2011).*

of the Board and should be challenged within the parties' contractual grievance and arbitration procedure. Finally, the Respondent maintains that no facts have been alleged that constitute an unfair labor practice, and requested that the Board dismiss the Complaint in its entirety. (See Answer at p. 5).

On April 13, 2011, MPD also filed a "Respondent[s] Motion to Dismiss Unfair Labor Practice Complaint." MPD stated as follows:

On July 7, 2010, the FOP submitted a request for information pursuant to Article 10 of the parties' collective bargaining agreement to Assistant Chief Parks. [citations omitted]. The request for information was regarding the Department's alleged new alcohol policy. The FOP alleges that the request for information also included a request for bargaining and that the Department failed to respond to both the request for information and the request for bargaining. [Motion at p. 2].

On November 18, 2010, the Complainant filed PERB Case No. 11-U-08, alleging that the Respondent committed an unfair labor practice by allegedly failing to provide pre-implementation notice to the FOP and by failing to bargain with the FOP over the impact and effects of the alleged change to the Department's alcohol policy. Further, the FOP alleged that the Respondent failed to respond to its request for information regarding the Department's alleged new alcohol policy.

On December 20, 2010, the Complainant filed this case which is virtually identical to PERB Case No. 11-U-08. Both cases arise out of the same set of facts (i.e., the Department's alleged change to its alcohol policy), and make the same legal arguments. (Motion at p. 3).

MPD identified 13 paragraphs in the narrative of the two complaints, which are identical. MPD posited that if the Complainants are alleging that the two cases pertain to different causes of action, the Board must look to National Labor Relations Board (NLRB) precedent. The NLRB analyzed the rules against splitting a cause of action stating that "we believe that such multiple litigation issues which should have been presented in the initial proceeding constitutes a waste of resources and an abuse of our process and that we should not permit it to occur." *Hyatt Hotels Corp.*, 296 NLRB 289, 311 (1989).

In response, on April 25, 2011, the Complainant filed a "Response to Respondent[s] Motion to Dismiss and Consent Request for Voluntary Dismissal" ("Motion"). The

Complainant's counsel, Marc L. Wilhite, represented that he contacted MPD's representative, Mark Viehmeyer, and that both agreed to a consent dismissal of this matter.

II. Discussion

The Complainant has filed the identical case in PERB Case No. 11-U-08 contains the same factual allegation and legal arguments, that MPD failed to bargain in good faith upon request and failed to provide information. The courts and the NLRB discourage the "splitting a cause of action" into various cases. The NLRB has found that this multiple litigation approach "constitutes a waste of resources and an abuse of our process." *Hyatt Hotels Corp.*, 296 NLRB 289, 311-312 (1989), (citing *Jefferson Chemical Co.*, 200 NLRB 992 (1972)). (In *Hyatt Hotel*, the Complainant raised the issue of failure to bargain in good faith regarding the same facts that it alleged in another matter pending before the Board. The Respondent alleged that the complainant in that case improperly split the causes of action and unnecessarily subjected the Respondent to multiple litigation. The NLRB rejected the multiple litigation approach.)

In the present case, the parties have acknowledged the repetitious nature of PERB Case No. 11-U-08 and this matter, PERB Case NO. 11-U-15, and mutually agreed to request dismissal of this matter. Based on the facts presented, Staff recommends that the Board grant the request to dismiss this matter with prejudice.²

PROPOSED ORDER

IT IS HEREBY ORDERED THAT:

1. The Metropolitan Police Department's Motion to Dismiss this matter by the mutual consent of the parties is granted.
2. The Unfair Labor Practice Complaint filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee against the District of Columbia Metropolitan Police Department is **DISMISSED** with prejudice.
3. This Decision and Order is final pursuant to Board Rule 559.1.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, DC.

November 7, 2011

² The Respondent also raised another defenses in support of its Motion to Dismiss. MPD asserts that the Board lacks jurisdiction over contractual disputes and the request made by the Union was based on Article 10 of the collective bargaining agreement. This substantive argument will be addressed in PERB Case No. 11-U-08.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-15 was transmitted via Fax and U.S. Mail to the following parties on this the 7th day of November 2011.

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