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Government of the District of Columbia
Public Employee Relations Board

_____)	
In the Matter of:)	
)	
FRATERNAL ORDER OF POLICE/)	Unfair Labor Practice Complaint
METROPOLITAN POLICE)	
DEPARTMENT LABOR COMMITTEE)	
)	
)	
Petitioner ,)	PERB Case No. 11-U-50
)	
v.)	Opinion No. 1226
)	
DISTRICT OF COLUMBIA)	
METROPOLITAN POLICE)	
DEPARTMENT)	
Respondent.)	
_____)	

DECISION AND ORDER

I. Statement of the Case

The Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP” or “Complainant”) filed an Unfair Labor Practice complaint alleging interference, restraint, or coercion of an employee in rights guaranteed by CMPA. Respondent denies these allegations in Answer. Complainant responds to Answer in Response to Answer.

Respondent has not replied.

II. Discussion

In the Complaint, Complainant states the following:

2. On July 19, 2011, Commander George Kucik of the Forensic Science Division published a new scheduling scheme, effective August 28, 2011, for members assigned to the MPD's Forensic

Science Division. On July 19, 2011, Lieutenant Michelle Milam sent an email to members of the Forensic Science Division informing them of the new scheduling scheme. The email stated, in relevant part, as follows:

Effective August 28, 2011, a new Crime Scene Search schedule will take effect.

To further enhance coverage within the unit, an eight week rotational schedule with either Tuesday/Wednesday or Wednesday/Thursday will be implemented. Those assigned Sunday/Monday as days-off will rotate to Tuesday/Wednesday days-off every eighth week. Those assigned Friday/Saturday as days-off will rotate to Wednesday/Thursday days-off every eighth week. [*Citations Omitted*]

3. On July 22, 2011, the FOP sent a letter to Chief Lanier requesting bargaining concerning the new scheduling scheme for the Forensic Science Division. See Exhibit 3. The MPD and Chief Lanier have failed to bargain with the FOP concerning the new scheduling scheme for the Forensic Science Division.

4. The MPD violated its duty to bargain in good faith with the DCFOP when it was asked to do so but failed to bargain with the DCFOP concerning the new scheduling scheme for the Forensic Science Division.

5. Chief Lanier is the highest ranking official of the MPD and has ultimate responsibility for the officials under her command, including the individually named respondents Commander George Kucik and Lieutenant Michelle Milam.

6. Commander George Kucik, Lieutenant Michelle Milam, and Chief of Police Cathy Lanier are responsible parties and PERB precedent and D.C. Code § 1-617.04(a) (2001 ed.) clearly provides that such agents and representatives of the District and its agencies are responsible for unfair labor practices and it is proper and appropriate to proceed against these individual respondents. See *Fraternal Order of Police v. District of Columbia*, PERB Case No. 08-U-41 (2009).

...

12. [*sic*] Respondents violated D.C. Code § 1-617.04(a) by interfering, restraining coercing, or retaliating against the exercise

of rights guaranteed to the FOP members by the CMPA. Specifically, (a) the FOP was engaged in protected union activities by requesting bargaining over the MPD's unilateral changes to the Forensic Science Division's schedule; (b) Respondents knew of the activities as evidenced by the FOP's written request for bargaining sent to Chief Lanier; (c) there was express anti-union animus by the MPD and the Respondents demonstrated by the MPD's unilateral changes to the Forensic Science Division's schedule and refusal to bargain over the scheduling changes; and (d) Respondents attempted to interfere, restrain, coerce, and retaliate against the FOP in the exercise of the rights guaranteed by the CMPA by initiating unilateral changes to the Forensic Science Division's schedule and refusing to bargain over the scheduling changes.

8. The Respondents have also committed an unfair labor practice in violation of D.C. Code §1-617.04(a) by dealing directly with bargaining unit members. By directly dealing with FOP members in an effort to induce FOP members to change their schedule, the Respondents improperly attempted to induce FOP members into waiving their Article 24 rights under the CBA. By doing so, the Respondents interfered with and coerced FOP members in the exercise of their rights guaranteed by the Comprehensive Merit Personnel Act in violation of D.C. Code §1-617.04(a).

9. The Respondents' negotiations with FOP members regarding the Forensic Science Division's schedule also constituted improper polling of FOP members. In distributing the electronic mail containing the new scheduling scheme, the Respondents went beyond mere information and opinion gathering concerning its operations, and instead negotiated and dealt directly with FOP members concerning conditions of employment. The Respondents were required to go through the exclusive bargaining unit for input, instead of communicating directly with FOP members concerning the proposed change to Forensic Science Division's schedule. This is the case even when the subject matter involves a management right that may be implemented without bargaining. In short, the Respondents violated the CMPA by contacting DCFOP members directly on proposed scheduling changes.

10. In addition, the Respondents' failure to negotiate in good faith with the DCFOP regarding the MPD's unilateral changes to the Forensic Science Division's schedule constitutes an unfair labor practice recognized by the Board and a violation of the duty to bargain in good faith found in D.C. Code §1-617.04(a).

(Complaint at pgs. 3, 4, 5, 6)

Respondent raises the following in Answer:

2. In response to the allegations contained in paragraph 2 of the Complaint, Respondents admit that on July 19, 2011, Lieutenant Michelle Milam sent an email to members of the Forensic Science Division. The remaining allegations in paragraph 2 of the Complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety. In addition, Exhibit 2 of the Complaint speaks for itself.

3. In response to paragraph 3 of the Complaint, Respondents admit that on July 22, 2011, the FOP sent a letter to Chief Lanier. The remaining allegations in paragraph 3 of the Complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety. In addition, Exhibit 3 of the Complaint speaks for itself.

4. The allegations contained in paragraph 4 of the complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.

5. Respondents admit the allegations contained in paragraph 5 of the Complaint.

6. The allegations contained in paragraph 6 of the complaint are the legal conclusions of the pleader to which no response is required. To the extent that a response is deemed required, the allegations are denied in entirety.

(Answer at pg. 2).

The Board finds that the Complainant has pled allegations that, if proven, would constitute a violation of the CMPA. However, as stated above, it is clear that the parties disagree with respect to a number of facts in this case. Specifically, the parties' dispute the nature and substance of the scheduling decisions that took place throughout the period at issue. On the record before the Board, establishing the existence of the alleged unfair labor practice violations requires credibility determinations about conflicting allegations. "The validation, i.e. proof, of the alleged statutory violation is what proceedings before the Board are intended to determine." *Jackson and Brown v. American Federation of Government Employees, Local 2741, AFL-CIO*, 48 DCR 10959, Slip Op. No. 414 at p. 3, PERB Case No. 95-S-01 (1995).

The allegations made by Complainant are in dispute, and are necessary to determine whether an Unfair Labor Practice has occurred, and PERB currently has insufficient information to make a determination based on the pleadings. Therefore, this matter shall be referred to a hearing examiner.

ORDER

IT IS HEREBY ORDERED THAT:

1. This matter is to be referred to a hearing examiner.
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.

November 21, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 11-U-50 was transmitted via Fax and U.S. Mail to the following parties on this the 21st day of November 2011.

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