

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

_____)	
In the Matter of:)	
)	
District of Columbia Nurses Association)	
)	PERB Case No. 12-U-19
Petitioner,)	
)	Opinion No. 1262
v.)	
)	
District of Columbia Department of Youth)	
Rehabilitation)	
)	
Respondent.)	
_____)	

An unfair labor practice complaint filed by the District of Columbia Nurses Association (“Union” or “Complainant”) alleges that on December 9, 2011, the Union filed a grievance on behalf of a member of the Union (“grievant”). The grievance asked the Department of Youth Rehabilitation (“Department”) for six items of information for the purpose of investigating “the management action giving rise to the grievance and to assist the grievant in her case.” The complaint further alleges that “[t]o date, the Agency has failed to respond. . . .” (Complaint at p. 2.)

The Department’s answer admits that as of the date the complaint was filed, February 7, 2012, the Department had not responded, but, the answer alleges, ten days later the Department responded to the Union’s grievance and provided certain materials related to the requested items with the exception of the request for the grievant’s personnel file and performance evaluation. With regard to that request, the Department asserts, “under Article seventeen (17) of the parties’ collective bargaining agreement (CBA), an employee can examine his or her personnel file upon written request. . . . The Respondent is under no obligation to provide a copy of the personnel file either to the employee or the employee’s representative.” (Answer at pp. 3-4.) The Department denies the alleged statutory violation, asserts that it has provided a full and complete response to the requests to which the Union is entitled, asserts that it is prepared to allow access to the personnel file, and requests that the complaint be dismissed. (*Id.* at pp. 4-5.)

The Union has pleaded or asserted allegations that, if proven, would constitute a statutory violation. As a result, the Board denies the Department’s motion to dismiss. The pleadings present questions of fact warranting a hearing. These questions of fact include, but are not limited to, whether the requested items of information have been provided; whether the delay in

providing them was unreasonable (*see AFSCME, Local 2087 v. Univ. of D.C.*, Slip Op. No. 1009 at p. 8, PERB Case No. 08-U-54 (Dec. 31, 2009)); and whether the Department's offer of access to the personnel file is, as the Department alleges, "consistent with the procedures outlined in the CBA." (Answer at p. 4.) Accordingly, we direct the development of a factual record through an unfair labor practice hearing at which the Complainant will have the burden of proving the allegations of the complaint by a preponderance of the evidence as provided by Rule 520.11.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Department of Youth Rehabilitation Service's request for dismissal of the complaint is denied.
2. The Board's Executive Director shall: (1) assign this matter to a Hearing Examiner and (2) schedule a hearing.
3. Pursuant to Rule 550.4 the Notice of Hearing shall be issued at least fifteen (15) days prior to 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.

April 24, 2012

CERTIFICATE OF SERVICE

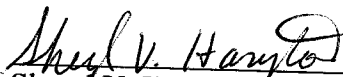
This is to certify that the attached Decision and Order in PERB Case No. 12-U-19 is being transmitted via U.S. Mail to the following parties on this the 25th day of April 2012.

Edward J. Smith, Esq.
D.C. Nurses Association
5011 Wisconsin Ave. NW, suite 306
Washington, D.C. 20016

U.S. MAIL

Nina McIntosh
Attorney - Advisor
D.C. OLRCB
441 4th Street, N.W.
Suite 820 North
Washington, D.C. 20001

U.S. MAIL



Sheryl V. Harrington
Secretary