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 formal 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:

Clarence E. Mack,

Complainant,

V.

District of Columbia
Department of Corrections,

District of Columbia

Respondent.

## DECISION AND ORDER

On April 27, 1995, Complainant Clarence E. Mack, an employee at the D.C. Department of Corrections, filed an Unfair Labor Practice Complaint in the above-captioned proceeding. The Complainant charged that Respondent Department of Corrections (DOC) violated his statutory employees rights by its disparate treatment of Complainant during an election for a local union office. By this conduct, the Complainant asserts that DOC has committed an unfair labor practice in violation of the Comprehensive Merit Personnel Act (CMPA), as codified under D.C. Code § 1-618.4(a)(1) and (2).

The Office of Labor Relations and Collective Bargaining (OLRCB), on behalf of DOC, filed an Answer to the Complaint, denying the acts and conduct alleged in support of the asserted unfair labor practices, and attaching internal memoranda in support of some or all of those denials. The Complainant responded by filing a "Motion for Summary Judgment". OLRCB filed a Response to the Motion, stating that factual controversies exist that could affect the outcome of the case and that the Motion therefore should be denied. Complainant filed a Reply to OLRCB's Response.

A review of these pleadings reveal that genuine issues of fact exist with respect to the basis of the asserted unfair labor

Decision and Order PERB Case No. 95-U-14 Page 2

practices.¹/ We find that a determination cannot be made without a resolution of these factual disputes and therefore, Complainant's Motion for Summary Judgement must be denied. Cf., Clarence Mack, et al. v. FOP\DOC Labor Committee, Slip Op. No. 386, PERB Case No. 94-U-24 (1995). The Complaint will be referred to a hearing examiner for further development of the record and to make findings, conclusions and recommendations.

## ORDER

## IT IS HEREBY ORDERED THAT:

The Motion for Summary Judgement is denied.

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

July 20, 1995

Complainant states that the sworn affidavits (attached to his Motion) in support of the Complaint allegations leave no genuine issues of fact. He argues, therefore, that he is entitled summary judgement. While, as Complainant notes, Respondent's Answer to the Complaint does not consist of a sworn statement, Board Rule 520.6 makes no such requirement. OLRCB has denied the Complaint allegations and thereby met the requirements of Board Rule 520.6 to place the factual basis of the Complaint in Parties to an unfair labor practice proceeding are not required to prove their case on the pleadings. We further note that while the Complainant has cited Federal case law in support of his Motion, those cases were pursuant to Federal Rules of Civil Procedure (FRCP). The D.C. Public Employee Relations Borad does not follow the FRCP but rather has its own rules that govern the processing and disposition of actions before it.